

Urban Law Annual ; Journal of Urban and Contemporary Law

Volume 55

January 1999

Louisiana's New "Kill the Carjacker" Statute: Self-Defense or Instant Injustice?

Susan Michelle Gerling

Follow this and additional works at: https://openscholarship.wustl.edu/law_urbanlaw



Part of the [Law Commons](#)

Recommended Citation

Susan Michelle Gerling, *Louisiana's New "Kill the Carjacker" Statute: Self-Defense or Instant Injustice?*, 55 WASH. U. J. URB. & CONTEMP. L. 109 (1999)

Available at: https://openscholarship.wustl.edu/law_urbanlaw/vol55/iss1/6

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Urban Law Annual ; Journal of Urban and Contemporary Law by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

LOUISIANA'S NEW "KILL THE CARJACKER" STATUTE: SELF-DEFENSE OR INSTANT INJUSTICE?

The new Louisiana "Kill the Carjacker" statute (the Statute), enacted in July of 1997, has made it easier for Louisiana motorists to take the law into their own hands.¹ The statute justifies homicide when either a passenger or driver reasonably believes that another person is committing or attempting to commit a burglary or robbery of the vehicle through the use of *any* unlawful force.² The statute imposes no duty to retreat, but instead justifies homicide committed by a passenger or driver inside the vehicle against an individual who is attempting to unlawfully enter the vehicle, if the passenger or driver "reasonably believes" that deadly force is necessary either to prevent the individual's unlawful entry or to force the individual out of the vehicle.³

1. 1997 La. Sess. Law Serv. 1378 (West). This new law became a part of the Louisiana "Kill the Burglar" statute. LA. REV. STAT. ANN. § 14:20(3)-(4) (West Supp. 1999), *amended by* LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998).

2. Section 3 of the "Kill the Burglar" statute provides in full:

A homicide is justifiable when committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle. The homicide shall be justifiable even though the person does not retreat from the encounter.

Section 14:20(3).

3. *See id.* Section 4 of the "Kill the Burglar" statute provides in full:

A homicide is justifiable: When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40), against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or

The new law is controversial, in part because Louisiana citizens may carry concealed weapons.⁴ While some call it “a license to kill” and believe the statute encourages rash decisions of instant “justice,”⁵ others view it as an important form of protection for innocent automobile drivers.⁶ Still others are troubled that the law has the potential of rendering minors more vulnerable to carjackings because shrewd carjackers will intentionally target minors, knowing that minors cannot carry concealed weapons.⁷ Other concerns abound. Some fear that the statute will cause drivers to “jump the gun,” as in the case of Yoshihiro Hattori, a foreign exchange student who was killed while trick-or-treating after a home owner accidentally mistook him for a burglar and shot him.⁸ Others fear the statute will become a

motor vehicle, and the person committing the homicide *reasonably believes* that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises or motor vehicle. The homicide shall be justifiable even though the person committing the homicide does not retreat from the encounter.

Section 14:20(4).

4. See Editorial, *Lawsiana*, RICHMOND TIMES-DISPATCH, Aug. 30, 1997, at A8.

5. See Gregory Kane, *Louisiana Carjack Law Allows Justice, Not Lynching*, BALTIMORE SUN, Aug. 24, 1997, at 1B; Rivera Live: *Possible Ramifications of a New Carjacking Law in Louisiana* (CNBC television broadcast, Aug. 14, 1997) [hereinafter *Possible Ramifications*]; Rivera Live: *Louisiana's Recently Passed Anti-Carjacking Legislation* (CNBC television broadcast, Aug. 22, 1997) [hereinafter *Recently Passed*].

6. Advocates of the law view it as a convenient statute “that will render unnecessary the state of Louisiana having to charge law abiding citizens who chose to defend themselves against carjackers.” Kane, *supra* note 5, at 1B.

7. See Richard Haymaker, *Readers' Views*, THE ADVOCATE (Baton Rouge), May 27, 1997, at 6B. Haymaker points out a problem with amending the “Kill the Burglar” statute to include the “Kill the Carjacker” statute, stating: “Cars are different from homes. A predator looking for a target can see into a car and determine whether the driver is under 21.” *Id.*

8. See Kevin Johnson, *Louisiana Law Aims at Carjackers OKs Use of Deadly Force Against Attack*, USA TODAY, Aug. 13, 1997, at 3A. Hattori and a friend were on their way to a Halloween party. Hattori had dressed up for the party in a “Saturday Night Fever” costume. The two friends went to the wrong address and rang the doorbell to the Peairs’ home. When Mrs. Peairs answered the door, she screamed, and Mr. Peairs came outside with his gun after Hattori and his friend had moved to the sidewalk. Hattori tried to communicate with Mr. Peairs, but because he did not speak English very well, he gestured by waving his arms. Mr. Peairs shot and killed Hattori. See N.Y. TIMES, Sept. 16, 1994, at A7.

A jury acquitted Peairs of manslaughter under Louisiana’s “Kill the Burglar” statute, leading many to fear that an extension of the “Kill the Burglar” statute to motor vehicles will lead to similar tragic mistakes with no legal deterrent. See *Possible Ramifications*, *supra* note 5. There is a fear that people will mistake persons who approach their automobiles for carjackers. One such incident occurred in Missouri in 1996. See *Johnson v. Grob*, 928 F. Supp. 889 (W.D. Mo. 1996) (involving a motorist who panicked when a Special Agent of the United States Bureau of Alcohol, Tobacco and firearms and an officer of the Missouri State Highway patrol

"lynch law" because they believe that most carjackers—the potential victims of the "Kill the Carjacker" statute—are Black persons.⁹

The Louisiana legislature designed the "Kill the Carjacker" statute in response to the increasing rate of carjackings in Louisiana—especially in New Orleans.¹⁰ The legislature deemed the "Kill the Carjacker" statute a necessity even though the federal government had a carjacking statute,¹¹ Louisiana had previously enacted a carjacking statute in 1993,¹² and it had self-defense legislation on the books.¹³ The "Kill the Carjacker" statute has shifted the focus of the

approached her car during a covert operation). *See also* *St. Hilaire v. City of Laconia*, 71 F.3d 20, 23 (1st Cir. 1995); *Gutierrez-Rodriguez v. Cartegena*, 882 F.2d 553, 557-561 (1st Cir. 1989); *Beran v. United States*, 759 F. Supp. 886, 888-890 (D.D.C. 1991).

9. *See* Gregory Kane, *New Louisiana Statute on Carjacking Isn't Lynch Law*, NEW ORLEANS TIMES-PICAYUNE, Sept. 2, 1997, at B7.

10. LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998), amending LA. REV. STAT. ANN. § 14.20(3)-(4) (West 1997). *See Possible Ramifications*, *supra* note 5. Louisiana State Representative C. Emile Bruneau Jr., who sponsored the bill, stated that "[w]e have had some horrible carjackings in Louisiana . . . we have had a significant problem." *Id.*

11. The current federal carjacking statute states:

Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—

- (1) be fined under this title or imprisoned not more than 15 years, or both,
- (2) if serious bodily injury . . . results, be fined under this title or imprisoned not more than 25 years, or both, and
- (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.

18 U.S.C. § 2119 (1994) (amending 18 U.S.C. § 2119 (1992)) (emphasis added).

Most state carjacking charges can also occur under the federal carjacking statute because most automobiles have traveled in interstate or foreign commerce.

12. LA. REV. STAT. ANN. § 14:64.2 (West 1997). The statute provides:

A. Carjacking is the intentional taking of a motor vehicle, as defined in R.S. 32:1(40) belonging to another person, in the presence of that person, or in the presence of a passenger, or any other person in lawful possession of the motor vehicle, by the use of force or intimidation.

B. Whomever commits the crime of carjacking shall be imprisoned at hard labor for not less than two years and for not more than twenty years, without benefit of parole, probation, or suspension of sentence.

Id.

13. LA. REV. STAT. ANN. § 14:20(1)-(2) (West 1997). The self-defense statute's pertinent sections read as follows:

law away from considering both the carjacker's intent *and* the motorist's reasonable belief that he or she is in imminent danger of death or great bodily harm. The statute focuses, instead, on the motorist's reasonable belief that any unlawful force would be used against him or her or that deadly force was necessary to prevent the unlawful entry into, or force the carjacker out of, the vehicle.¹⁴

This note suggests that the "Kill the Carjacker" statute is excessive and unreasonable, because it encourages motorists to resort to homicide when it is unnecessary to protect themselves against death or great bodily harm. The federal carjacking statute¹⁵ and the Louisiana self-defense statute¹⁶ adequately enable Louisiana motorists to protect themselves against a threat of death or great bodily harm. The new statute goes too far, not only because it allows Louisiana motorists to use deadly force to combat the mere fear that *any* unlawful force will be used against them, but also because it justifies homicide for the sake of protecting mere personal property. Furthermore, under no circumstances does the statute impose a duty to retreat.¹⁷ Therefore, the statute is dangerous and extreme and should be repealed.

Part I of this note examines the requirements of the Louisiana's "Kill the Carjacker" law, the federal carjacking statute, Louisiana's self-defense statute, and Louisiana's carjacking statute. Part II is an analysis and comparison of how a victim or potential victim, of a carjacking may legally react under (a) the "Kill the Carjacker"

A homicide is justifiable:

When committed in self-defense by one who reasonably believes that he is in imminent danger of *losing his life or receiving great bodily harm* and that *the killing is necessary* to save himself from that danger.

When committed for the purpose of preventing a violent or forcible felony *involving danger to life or of great bodily harm* by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be *serious danger to his own life or person* if he attempted to prevent the felony without the killing.

Id. (emphasis added).

14. *See id.*

15. *See* 18 U.S.C. § 2119 (1997).

16. *See* LA. REV. STAT. ANN. § 14:20(1)-(2) (West 1997).

17. *See id.*

statute, (b) the federal carjacking statute coupled with Louisiana's self-defense statute, and (c) the self-defense statute combined with Louisiana's 1993 carjacking statute. Part III proposes repealing the "Kill the Carjacker" statute and discusses other alternatives for Louisiana legislature, such as a carjacking task force, amendments to the "Kill the Carjacker" statute, and greater education on carjacking prevention.

I. HISTORY

Reports of the increasing number of, and increasing violence of, carjackings outraged the nation and made the country aware of the need to combat carjackings with added force.¹⁸ Carjackings and attempted carjackings numbered over 35,000 per year from 1987-1992, with nearly 11,000 of them involving the use of firearms.¹⁹ Furthermore, the ghastly carjacking of Pamela Basu, in which Basu was killed after being dragged behind her car and after her infant daughter was tossed onto the street, prompted Congress to legislate carjacking as a federal offense.²⁰

18. See F. Georgann Wing, *Putting the Brakes on Carjacking or Accelerating It? The Anti Car Theft Act of 1992*, 28 U. RICH. L. REV. 385, 390 (1994). Earlier attempts to combat auto-theft, such as the Motor Vehicle Law Enforcement Act of 1984, 15 U.S.C. §§ 2021-2034 (1984), had proved ineffective. In fact, carjackings became more popular as traditional auto theft became increasingly troublesome due to Americans' increased use of auto theft devices. See Wing, *supra*, at 385-86. See also 138 CONG. REC. 9340 (1992) (statement of Sen. Pressler) (proposing S-2613, the Anti-Car theft Act of 1992); 138 CONG. REC. S27645 (1992) (statement of Sen. Pressler) (proposing amendment no. 3165, the Car Theft Prevention and Deterrence Act), cited in Wing, *supra*, at 385-86; and Nora Zamichow, *Deadly Carjacking Raises Questions and Fears; Crime Wave: Commandeering of Cars is On the Increase. San Diego has had 171 Cases this Year, as the Nationwide Trend Continues*, L.A. TIMES, Oct. 8, 1992, at B1.

19. See Mary C. Michenfelder, Note, *The Federal Carjacking Statute: To Be or Not to Be? An Analysis of the Propriety of 18 U.S.C. § 2119*, 39 ST. LOUIS U. L.J. 1009, 1012-13 (1995); *U.S. Carjacking Attempts Average 35,000 a Year*, UPI, Apr. 1, 1994, available in LEXIS, News Library, Wires File, cited in Michenfelder, *id.* See also *It Has Come to Our Attention*, 58 FED. PROBATION 87 (1994).

20. See *United States v. Holloway*, 921 F. Supp. 155, 157-158 (E.D.N.Y. 1996). In 1992, Pamela Basu and her infant daughter were in their vehicle when two men forced Basu out of the car. When she tried to save her baby, Basu became caught in her seatbelt, which was hanging out of the car. The men drove away, dragging Basu for a mile and a half. They dislodged Basu from the seatbelt by driving near a fence so that her body would strike it, resulting in Basu's death. In addition, the carjackers threw the child out of the car and onto the pavement, leaving her unharmed. Graciela Sevilla & Dan Beyers, *Mother Killed in Apparent Carjacking; Baby in Car Seat Tossed From Vehicle*, WASH. POST., Sept. 9, 1992, at A1.

The original federal carjacking statute required that the perpetrator possess a firearm while committing the carjacking and did not provide for the death penalty.²¹ Congress amended the statute in 1994 to provide for the death penalty when a carjacking results in homicide and dropped the requirement that the perpetrator possess a firearm at the time of the carjacking.²² Instead, the perpetrator must act with “the intent to cause death or serious bodily harm.”²³ The effect of the 1994 amendments was to broaden the reach of the federal statute.²⁴

The 1994 amendments caused disparities in the application of the federal carjacking statute because the United States Courts of Appeals interpret the intent requirement of the statute differently. In *United States v. Anderson*, the Third Circuit held that a showing of conditional intent satisfied the intent element of the federal carjacking statute.²⁵ Under *Anderson*, a court should vindicate a motorist of killing or injuring a suspected carjacker only if the carjacker intended to kill or seriously harm the motorist upon the motorist’s refusal to surrender his or her vehicle.²⁶ The Second

As a result of heinous, violent carjackings like the Basu carjacking, Congress enacted the federal carjacking statute. See 18 U.S.C. § 2119 (1994) (amending 18 U.S.C. § 2119 (1992)). Shortly before President Bush signed the federal carjacking statute in 1992, he echoed the sentiment of a nation that had had enough of this violent crime, stating, “[w]e cannot put up with this type of animal behavior. These people have no place in decent society . . . and they can rot in jail for crimes like that.” Speech by President George Bush in St. Louis, Missouri (Sept. 28, 1992), available in LEXIS, Nexis Library, Fednews File. See also 139 CONG. REC. S15,295-01, S15,301 (daily ed. Apr. 19, 1993) (statement of Sen. Lieberman) (introducing an amendment to 18 U.S.C. § 2119 to impose the death penalty in cases where death results and to remove the possession of firearm element of the crime, and stating “It was the collective horror over that [Basu] case that prompted Congress to federalize carjacking and provide stiff penalties for the crime”); 138 CONG. REC. 33452 (1992) (statement of Rep. Morella) (mentioning the Basu killing in support of H.R. 4542 the Anti-Car Theft Act, which would become 18 U.S.C. § 2119); 138 CONG. REC. 25672, 34372 (1992) (statement of Sen. DeConcini) (carrying support for the proposed 18 U.S.C. § 2119 in order to stop “atrocities” such as the Basu incident); 138 CONG. REC. 25146 (1992) (statement of Cong. Bliley) (calling for federal legislation prescribing the death penalty as punishment to fight carjackings like the one in which Basu was killed).

21. 18 U.S.C. § 2119 (1992), amended by 18 U.S.C. § 2119 (1994).

22. See 18 U.S.C. § 2119 (1994).

23. *Id.*

24. See 139 CONG. REC. S15295, S15301 (1993)(statement of Sen. Lieberman).

25. *United States v. Anderson*, 108 F.3d 478 (3d Cir. 1997).

26. In *Anderson*, the United States charged the defendant under the federal carjacking statute. See 108 F.3d at 479. Fleeing the scene of a crime with the police in pursuit, the defendant approached a man washing his car and pressed his gun against the back of the man’s

Circuit held similarly in *United States v. Arnold*²⁷ by affirming *United States v. Holloway*²⁸—an opinion from the Eastern District of New York holding that the government satisfies the intent element of a carjacking under the federal carjacking statute when it establishes that the carjacker intended to cause death or serious bodily harm to a victim who gave the carjacker “a hard time.”²⁹

Similarly, the Tenth Circuit addressed the intent question in *United States v. Romero* when it held that the federal carjacking statute requires a showing of conditional intent because “conditional intent is still intent.”³⁰ The court criticized the Ninth Circuit’s decision in *United States v. Randolph*, in which the Court of Appeals

neck. He told the man that the police were after him and that he was taking the man’s car. When the man tried to stop the defendant by running to the driver’s side of the car, the defendant pointed a gun out of the driver’s side of the car and drove away. *See id.* at 479-480. On appeal from his conviction, the defendant argued that the evidence was insufficient to fulfill the intent requirement of 18 U.S.C. § 2119 because the government did not prove that he intended to cause death or serious bodily injury to the victim. The Third Circuit held that there was sufficient evidence that the defendant intended to cause death or serious bodily injury to his carjacking victim if the victim had refused to relinquish the vehicle. 108 F.3d at 485. The court found the defendant’s *conditional intent* sufficient to convict him under the federal carjacking statute. *Id.* at 481-485.

The *Anderson* court considered the 1994 amendment to the former federal carjacking statute, which dropped the requirement that the carjacker possess a firearm, to require merely that the carjacker intend “to cause death or serious bodily harm.” The court noted that the amendment’s purpose was “to broaden and strengthen [the carjacking statute] so our U.S. attorneys (sic) have every possible tool available to them to attack the problem;” to the court, requiring unconditional intent would serve only to narrow the scope of the statute. *See id.* at 483 (citing 139 CONG. REC. S15295, S15301 (1993) (Statement of Sen. Lieberman)). The court stated: “Rarely will there be a case where there will be evidence of a defendant’s unconditional intent to cause death or serious bodily harm whether or not the victim relinquishes his or her car, yet the victim sustains no injuries,” reasoning that Congress did not intend for the statute to apply only where death or severe bodily injury results, as evidenced by the 1994 amendments’ enhanced penalties for situations where death or serious bodily injury result. *See id.* Finally, the court used the test endorsed by Professors LaFave and Scott: “[w]here a crime requires the defendant to have a specified intention, he has the required intention although it is a conditional intention, ‘unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.’” *See id.* (quoting WAYNE R. LAFAVE AND AUSTIN W. SCOTT, JR., *SUBSTANTIVE CRIMINAL LAW* § 3.5(d), at 313 (1986) (citing MODEL PENAL CODE § 2.02(6))). The court concluded that the absence of an unconditional intent to cause death or serious bodily harm did not negate *any* of the harms which the statute might have sought to prevent.” *See id.* at 484.

27. 126 F.3d 82 (2d Cir. 1997).

28. 921 F. Supp. 155 (N.Y. 1996).

29. *Id.* at 157.

30. 122 F.3d 1334, 1338 (citing *United States v. Arrellalio*, 812 F.2d 1209, 1211 n.2 (9th Cir 1987), *opinions corrected by* 835 F.2d 235 (1987)).

held that the federal carjacking statute requires more than a showing of conditional intent to cause death or serious bodily harm, concluding instead that the federal statute requires the perpetrator to possess specific, or unconditional, intent to cause the motorist's death or serious bodily harm.³¹ A mere threat, according to the *Randolph* court, is insufficient to demonstrate such specific intent and is "tantamount to a conditional intent to harm."³² The *Romero* court

31. 93 F.3d 656 (9th Cir. 1996).

32. *Id.* In *Randolph*, the defendant Randolph and four accomplices observed a woman withdrawing cash from an ATM and drove their Jeep next to her vehicle. *Id.* at 651. Randolph aimed a loaded semi-automatic assault rifle at the woman and directed her to hand over the money while one of his accomplices tugged on her seat belt and told her that if she did what they told her to do "she would be okay." Randolph took her money and her wallet and told her to drive out of town, refusing to let her out of the car in spite of her numerous requests. *Id.* Randolph had her pull the car over, told her to get out, and drove away, leaving her on the side of the road unharmed. *Id.* She testified that she thought Randolph "would shoot her if she disobeyed him." *Id.* After Randolph drove away, his accomplices, who had followed them out of town, beat the woman and left her in a ditch as they drove away. *Id.* at 659. Randolph testified that he did not intend to cause death or bodily injury to the woman, that he drove the woman out of town so that she could not immediately call the police, and that he was unaware that his accomplices would harm her. *Id.*

The court found insufficient evidence that Randolph had the requisite specific intent to kill or seriously harm the victim, and vacated his conviction under the federal carjacking statute. 93 F.3d at 658. The court considered the same 1994 amendment considered by the court in *Anderson*, and concluded that the purpose of the amendment is to convert "carjacking from a 'general intent' to a 'specific intent' offense." *Id.* at 661. The court did not see any discrepancy between the legislative intent and its interpretation of the statute. *Id.* However, this interpretation did not persuade the *Anderson* court, which criticized *Randolph* for "directly contraven[ing] the intent of Congress to broaden the application of the carjacking statute by the inclusion of the 1994 amendments." 108 F.3d at 483.

Like the *Anderson* court, the Ninth Circuit Court of Appeals in *Randolph* found guidance from Professors LaFave and Scott: "[t]he addition of a specific intent element requires the government to prove 'a special mental element . . . above and beyond any mental state required with respect to the [taking of a motor vehicle].'" 93 F.3d 656, 662 (citing WAYNE R. LAFAVE AND AUSTIN W. SCOTT, JR., 1 SUBSTANTIVE CRIMINAL LAW § 3.5, at 315 (1986)). Moreover, the Ninth Circuit determined that a mere threat was not sufficient to fulfill the elements of the statute and held that although the threat made by Randolph's accomplice would fulfill the element requiring "by force and violence or by intimidation," the threat could not fulfill the element requiring an "intent to cause death or serious bodily harm" because it would render that element of the crime mere "surplusage." *Id.* at 665. *See also* 18 U.S.C. § 2119.

Applying the facts of the case to the federal carjacking statute, the court found several significant reasons indicating that Randolph did not possess the requisite unconditional intent to cause death or serious bodily harm to the woman whose car he took. First, the court placed great weight on the fact that Randolph chose not to injure the woman even though he had every opportunity to do so. 93 F.3d at 664. Second, he did not assault her and was not even near the area where his accomplices assaulted her. *Id.* at 664. Finally, Randolph did not verbally threaten her, and "said nothing to indicate any animosity toward the victim." *Id.*

criticized the Ninth Circuit's opinion in *Randolph* for being in direct conflict with both the plain language of the statute and a conclusion that finds support in congressional intent,³³ *United States v. Lake*,³⁴ and *United States v. Norwood*³⁵—opinions from the district courts of the Virgin Islands and New Jersey holding that the federal carjacking statute requires a showing of conditional intent.³⁶

The Ninth Circuit, however, is not alone in requiring the government to prove specific intent under the federal carjacking statute. In *United States v. Craft*, the United States District Court for the Eastern District of Pennsylvania adopted *Randolph*'s unconditional specific intent requirement.³⁷ The Fifth Circuit, which includes Louisiana, has yet to rule on this issue.

By 1997 New Orleans experienced an increase in the number of carjackings—several of them high profile—in which victims were “charged initially for defending themselves.”³⁸ In response, the

33. See 122 F.3d 1334 (10th Cir. 1997).

34. 972 F. Supp. 328 (D. V.I. 1997).

35. 948 F. Supp. 374 (D. N.J. 1996).

36. See *Lake*, 972 F. Supp. at 332, *Norwood*, 948 F. Supp. at 379.

37. *United States v. Craft*, No. CRIM. A. 96-376, 1996 WL 745527 (E.D. Pa. 1996).

38. Between 1994 and 1995, auto thefts in New Orleans increased by fourteen percent. See Joe Gyan Jr., *Politics*, THE ADVOCATE (Baton Rouge), Mar. 3, 1996, at 1B. Most vehicles are stolen so that a chop shop can take the vehicle apart and sell the parts. See H.R. REP. NO. 102-851, pt. 2, at 1 (1992), reprinted in 1992 U.S.C.C.A.N. 2895; H.R. REP. NO. 102-851, pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830. See also 138 CONG. REC. 9340 (1992) (statement of Sen. Pressler); 138 CONG. REC. 27977-79, 34373-74 (1992) (statement of Sen. Lautenberg). In 1994, out of forty-seven cities with a population of over one million, New Orleans ranked as the fifth highest in terms of murder count, thirteenth in violent crimes, and twentieth in property crimes. See *id.* An average of two carjackings per day occurred in New Orleans in 1996. See Ian Brodie, *Drivers Get Right to Shoot Car Thieves*, THE TIMES (London), Aug. 4, 1997, at 14. Over 200 carjackings occurred in New Orleans within the first six months of 1997. See *World News Tonight* (ABC television broadcast, Aug. 15, 1997). One such case was the carjacking of Miss Louisiana, Erika Schwarz. In 1996, Ms. Schwarz was carjacked in a driveway. See Brodie, *supra*. When she spoke of the incident, she stated, “I was sitting in that seat . . . [a]nd I just start running . . . [a]nd he yells at me ‘stop!’ [a]nd at that moment I just knew he was going to shot me . . . and he said ‘Drop your purse!’” See *Possible Ramifications*, *supra* note 5. Ms. Schwarz was unharmed, but supports the “Kill the Carjacker” statute. See *World News Tonight*, *supra*. Another high profile case involved the carjacking, rape, and murder of a young advertising executive in New Orleans shortly before the 1997 Mardi Gras. See Guy Coates, *Motorists in Louisiana Can Use Deadly Force; Law Arms Carjacking Victims*, CHICAGO SUN TIMES, Aug. 14, 1997, at 3. Although downtown New Orleans is supposed to be the safest area in New Orleans, it is not immune from carjackings. See Gyan, *supra*, at 1B. A young lawyer was recently carjacked in a parking lot in the central business district. He was abducted and murdered by the carjackers. See *id.* See *Louisiana Ok's Shooting of Carjackers*,

Louisiana legislature enacted the “Kill the Carjacker” statute into law in July of 1997³⁹ by incorporating it into the Louisiana defense-of-dwelling statute⁴⁰ (the “Kill the Burglar” statute), whose rationale derives from the old English theory that it is as important to defend a home as it is to defend a life.⁴¹ Older defense-of-dwelling statutes broadly permit homeowners to use deadly force against intruders, while some merely require the homeowner to warn an intruder, regardless of whether the intruder was engaged in a felony.⁴² Modern defense-of-dwelling statutes allow homeowners to use deadly force in order to prevent certain types of felonies.⁴³ Louisiana’s “Kill the Burglar” statute is unusually broad in this respect because it sanctions homicide regardless of whether the intruder commits, or attempts to commit, a felony, as long as the homeowner subjectively believes that deadly force is necessary either to prevent entry into the dwelling or to compel the intruder to leave the dwelling.⁴⁴ Most states have not considered whether their defense-of-dwelling statutes should sanction the use of deadly force to protect against a mere dispossession of a dwelling.⁴⁵ Louisiana’s “Kill the Burglar” statute does justify the use of deadly force in such situations.⁴⁶

CHICAGO TRIBUNE, Aug. 14, 1997, at 19 (quoting Sandy Krasnoff, director of Victims and Citizens Against Crimes).

39. The Louisiana legislature enacted the statute into law with an immensely successful vote of 133 in favor of the statute and one vote against the statute. *See Brodie, supra* note 38.

40. Section 3 of the “Kill the Burglar” statute reads as follows:

A homicide is justifiable when committed against a person whom one reasonably believes to be likely to use *any unlawful force* against a person present in a dwelling or a place of business, while committing or attempting to commit a burglary or robbery of such dwelling or business. The homicide shall be justifiable even though the person does not retreat from the encounter.

LA. REV. STAT. ANN. § 14:20(3) (West 1997) (emphasis added).

41. *See* WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 5.9 at 467 (2d Ed. 1986).

42. *See id.*

43. *See id.*

44. LA. REV. STAT. ANN. § 14:20(4) (West 1997).

45. *See* LAFAVE & SCOTT, *supra* note 41, at 467.

46. *See* LA. REV. STAT. ANN. § 14:20(4) (West 1997). Justifiable homicide in cases of resisting dispossession of a dwelling found support in the 1924 English case *Rex v. Hussey*, 18 Crim. App. 160 (1924). Similarly, support for this proposition is found in the United States in the Model Penal Code. MODEL PENAL CODE § 3.06(3)(d)(i) (1985). It provides, “[t]he use of deadly force is not justifiable under this Section unless the actor believes that the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under

Under Louisiana's "Kill the Burglar" statute a homeowner can use deadly force against intruders in the home, without any obligation to retreat, if the homeowner reasonably believes that the intruder might use *any unlawful force* against anyone in the home.⁴⁷ In addition, this statute condones homicide when a person lawfully inside of a home or business kills an intruder attempting to enter unlawfully, or who is unlawfully present inside, a home or business if the person reasonably believes that deadly force is necessary to stop the intruder from entering or to compel the intruder to leave.⁴⁸

The sponsor of the "Kill the Carjacker" statute, State Representative Emile "Peppi" Bruneau, expanded the statute to permit the use of deadly force against carjackers because, considering the amount of time that people spend in their automobiles, the vehicle is an extension of the home.⁴⁹ According to Representative Bruneau, the purpose of the statute is two-fold: first, to act as a deterrent to carjackers; and, second, to allow victims to defend themselves.⁵⁰ Louisiana's "Kill the Carjacker" statute is the first in the nation to justify the use of deadly force in order to resist dispossession of *property*, thus begging the moral question of whether defending a

claim of right to its possession." *Id.*

47. See LA. REV. STAT. ANN. § 14:20(3) (West 1997).

48. See *id.* § 14:20(4). Section 4 of the "Kill the Burglar" statute read as follows:

A homicide is justifiable when committed by a person lawfully inside a dwelling or a place of business, against a person who is attempting to make an unlawful entry into the dwelling or place of business, or who has made an unlawful entry into the dwelling or place of business, and the person committing the homicide *reasonably believes* that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises. The homicide shall be justifiable even though the person committing the homicide does not retreat from the encounter.

Id. (emphasis added).

49. See *Recently Passed*, *supra* note 5; and LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998).

50. See *id.* Louisiana Governor Mike Foster commended the legislation, stating:

In Louisiana, if you break into somebody's home, it's too bad. . . . You're not going to go before a grand jury if you dispense with somebody who breaks into your home. . . . If you're involved in an armed carjacking, the same thing happens. . . . You are in trouble in Louisiana and you may be dispensed with.

Bill McMahon, *Governor Praises Carjacking Law*, THE ADVOCATE (Baton Rouge), Aug. 14, 1997, at 11A.

motor vehicle justifies the use of deadly force.⁵¹

A typical defense-of-property statute provides that “[o]ne is justified in using *reasonable force* to protect his property from trespass or theft, when he reasonably believes that his property is in immediate danger of such an unlawful interference that *the use of such force is necessary to avoid the danger.*”⁵² The Louisiana defense-of-property statute is similar, allowing the *reasonable* use of force (but not deadly force) to protect property from an unlawful trespass if the property owner subjectively believes that force is necessary to prevent the offense.⁵³ Prior to the enactment of the “Kill the Carjacker” statute, Louisiana law allowed a victim of a carjacking or attempted carjacking to use *reasonable force* to prevent the carjacking, but did not allow use of deadly force unless the victim reasonably believed that he or she was in imminent danger of death or serious bodily harm.⁵⁴ The enactment of the “Kill the Carjacker” statute, however, rendered Louisiana’s defense-of-property⁵⁵ and self-defense⁵⁶ statutes inapplicable to carjacking, and, instead, applied the “Kill the Burglar” statute,⁵⁷ to carjacking. In other words, the “Kill the Carjacker” statute expanded the reach of the “Kill the Burglar” statute to permit the use of deadly force against actual and attempted carjackings.

51. See LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998).

52. LAFAVE & SCOTT, *supra* note 41, at 667.

53. See LA. REV. STAT. ANN. § 14:19 (West 1997). The statute provides:

The use of force or violence upon the person of another is justifiable, when committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession; provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this article shall not apply where the force or violence results in a homicide.

Id. The Louisiana defense-of-property statute conforms with LaFave and Scott's view that “deadly force is never reasonable except where the unlawful interference with property is accompanied by a threat of deadly force (in which case it is proper to use deadly force in self-defense) or where the unlawful interference involves an invasion of an occupied dwelling house. . . .” LAFAVE & SCOTT, *supra* note 41, at 667. The statute also conforms to the Model Penal Code, which requires a subjective belief that the force is necessary. MODEL PENAL CODE § 3.06(1) (1985).

54. See LA. REV. STAT. ANN. § 14:19, 14:20(1) (West 1999).

55. See LA. REV. STAT. ANN. § 14:19 (West 1997).

56. See LA. REV. STAT. ANN. § 14:20(1) (West 1999).

57. LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998) (amending LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1997)).

On November 3, 1997, the first Louisiana citizen took advantage of the "Kill the Carjacker" statute.⁵⁸ That night three men spotted twenty-one year-old Aaron Bottoms and a friend driving a Monte Carlo.⁵⁹ After pursuing Bottoms for several miles, one of the men, Ernest Allen, approached the vehicle and pointed a semi-automatic weapon at Bottoms' head.⁶⁰ In response, Bottoms drew a gun and shot Allen.⁶¹ Bottoms stated that "he didn't think for a second about the 'Shoot the Carjacker' law, he just wanted to save his own life."⁶² Sheriff Harry Lee stated that although he personally found Bottoms' actions permissible irrespective of the "Kill the Carjacker" statute, the existence of the statute legitimized his decision not to arrest Bottoms.⁶³ Representative Bruneau remarked that Bottoms' was the classic case with which the "Kill the Carjacker" statute was designed to deal.⁶⁴

Louisiana is not the only state with a history of carjacking problems. Detroit, Michigan faced problems similar to those facing New Orleans, and reacted by creating an anti-carjacking task force.⁶⁵

58. See Stephanie Grace, *Lee: Carjacker Shooting is Clear-Cut; Jeff Case Getting National Attention*, THE TIMES-PICAYUNE, Nov. 6, 1997, at B1.

59. See *id.* They followed Bottoms for three and a half miles to a secluded street, when they pulled their vehicle in front of Bottoms' vehicle and slammed on the brakes, cutting off Bottoms. See *CNN Today: New Orleans Man Legally Shoots Suspected Carjacker* (CNN television broadcast, Nov. 5, 1997) [hereinafter *CNN*].

60. See Grace, *supra* note 58. According Bottoms, he heard Allen cock the gun and thought: "Oh, my God, he's going to kill us!" See Stephanie Grace, *Carjack Law's 1st Test in Jeff; No Charges Filed Against Shooter*, THE TIMES-PICAYUNE, Nov. 5, 1997, at A1 [hereinafter *No Charges Filed*]; *CNN, supra* note 59.

61. See Grace, *supra* note 58. Bottoms had a revolver sitting next to him. See *id.* He had a concealed weapons permit and was carrying a concealed weapon legally under Louisiana law. See *No Charges Filed supra* note 60. Allen's accomplices drove off in their vehicle and Bottoms called 911. See *id.* Police later found Allen one block from the scene of the crime, armed with a gun. See *id.* Allen's accomplices told the police that they intended to commit a carjacking. See *id.*

62. See *CNN, supra* note 60.

63. See *No Charges Filed, supra* note 60.

64. See Grace, *supra* note 58.

65. In 1985, Michigan ranked as the second highest state in auto theft. See Gordon Witkin et al., *Willing to Kill for a Car*, U.S. NEWS & WORLD REP., Sept 21, 1992, at 40, 42. In 1986, in response to the problem, Michigan charged a one dollar surcharge on every auto insurance policy issued in the state in order to fund an anti-carjacking task force (The Michigan Automobile Theft Prevention Authority). See *id.* The money was spent to hire a full time staff of 91 police officers, 7 prosecutors, and 13 supporting staff members dedicated full-time to fighting auto theft. See *id.* The task force was very successful and decreased Michigan's

The task force, combined with the efforts of the Michigan police and a campaign urging residents to purchase cellular phones, effectively decreased carjackings by sixty-six percent in one year.⁶⁶ Michigan's response to carjacking is more logical and less drastic than Louisiana's.

II. ANALYSIS

The "Kill the Carjacker" statute is not a logical extension of the "Kill the Burglar" statute. Originally, defense-of-dwelling statutes reflected the theory that the structures that shelter life were "places of security" equal in importance to life itself, but today many states limit their defense-of-dwelling statutes to allow use of deadly force only to prevent the commission of a felony, recognizing that the protection of life and limb is already guaranteed under self-defense statutes.⁶⁷ A motor vehicle, however, is not a dwelling and is not traditionally regarded as a "place of security." Motor vehicles are personal property and, although individuals may spend a substantial amount of time in them, should be treated like other items of personal property governed by defense-of-property statutes.⁶⁸ Moreover, persons inside motor vehicles are—and should remain—protected by self-defense

ranking from second highest in car thefts in 1985 to eighth highest in 1991. *See id.* at 43. The state task force, however, was not sufficiently effective as indicated by the remaining high rate of carjackings. During two summer months in 1991, Detroit residents experienced 406 carjackings at gunpoint. *See* Tammy Joyner, *Carjackings Could Capsize Insurance Reform Efforts*, DETROIT NEWS, Sept. 17, 1991, at A5 (stating figures obtained from Detroit Police Reports; *cited in* Wing, *supra* note 18, at 385, 386).

66. The Detroit anti-carjacking task force succeeded in reducing the city's carjacking rate from an average of seventy-five per week in 1991 to an average of twenty-five per week in 1992. *See* Avis Thomas-Lester and Santiago O'Donnell, *Forces Team Up to Fight Carjacking and Its 'Fear Factor'*, WASH. POST, Oct. 3, 1992 at B4. A similar task force in Houston decreased carjackings by fifty percent. *See id.* While the number of carjackings rose nationally, Michigan's carjacking rate decreased. *See Hearings on H.B. 4542 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary*, 102d Cong. 170 (prepared statement of Colonel Michael D. Robinson, Director, Michigan State Police). Michigan also replaced its "motorist aid phone system" with signs informing people to call 911 using their car telephones. *See* Bill Laitner, *Car Telephones Are Plugged As Emergency Alert Devices*, DETROIT FREE PRESS, Sept. 12, 1991, at E1. Michigan residents reacted by increasing their purchases of car telephones. *See id.*

67. *See supra* note 41 and accompanying text.

68. *See* LA. REV. STAT. ANN. § 14:19 (West 1997).

laws.⁶⁹ The common law maxim states that "[t]he preservation of human life and limb from grievous harm is of more importance to society than the protection of property."⁷⁰ In Louisiana the unfortunate consequence of the "Kill the Carjacker" statute is that the preservation of motor vehicles is more important than the preservation of life and limb.

The histories behind the federal and the Louisiana carjacking statutes are similar. Both were enacted because of an acceleration in carjackings and the high levels of violence associated with them.⁷¹ Congress and the Louisiana legislature passed their statutes, in part, as a reaction to gruesome, high profile carjackings, and to deter people from committing carjackings.⁷²

The Louisiana legislature arguably faced a more critical situation when it passed the "Kill the Carjacker" statute than did Congress when it enacted the federal carjacking statute. When Congress enacted the federal carjacking statute in 1992, the number of carjackings and attempted carjackings in the United States averaged 1.9 per *state* per day.⁷³ When the Louisiana legislature passed the "Kill the Carjacker" statute in July of 1997, New Orleans averaged two carjackings—*not including attempted carjackings*—per day throughout the year before the legislature enacted the statute, even

69. See LA. REV. STAT. ANN. § 14:20(1)-(2) (West 1997). According to Professors LaFave and Scott, "even when it is reasonable to use some force, it is not reasonable to use deadly force to prevent threatened harm to property, such as a mere trespass or theft, even though the harm cannot otherwise be prevented." See LAFAVE & SCOTT, *supra* note 41, at 466.

70. 4 AM. JUR., *Assault and Battery*, § 63 (1936). See also 40 C.J.S., *Homicide*, § 101 (1991); 26 AM. JUR., *Homicide*, § 172 (1940); 1 BISHOP CRIMINAL LAW § 876 (9th ed. 1923); 6 C.J.S., *Assault and Battery*, § 94 (1975). Similarly, the Model Penal Code, discussing the desirability of permitting the use of deadly force to prevent dispossession of a dwelling, noted "[t]o kill a man is . . . an evil both more serious and irrevocable than the loss of possession of a dwelling for a period during which a court order is being obtained to recover it, at least if no special circumstances are present." MODEL PENAL CODE § 3.06, Comment at 93 (1985). This logic applies even more convincingly to the loss of possession of a mere motor vehicle. See *id.* Interestingly enough, the Model Penal Code does allow the use of deadly force to prevent the dispossession of a dwelling. See MODEL PENAL CODE § 3.06(3)(d)(i) (1985).

71. See *supra* notes 19, 38, 39 and accompanying text.

72. See *id.* One could argue that enacting the "Kill the Carjacker" statute has failed to adequately combat rising incidents of carjackings and the high levels of violence associated with them. See also *supra* note 50 and accompanying text.

73. See *supra* note 19 and accompanying text. The author arrived at this figure by dividing 35,000 carjackings per year by 365 days and by 50 states to arrive at (35,000/(365 x 50)) 1.9178 carjackings per day per state.

though the federal carjacking statute had been in effect for over four years.⁷⁴ The Louisiana legislature's overwhelming support of the bill is evidence that Louisiana citizens felt a need to take measures beyond relying on the federal carjacking statute and the state self-defense statute.⁷⁵ However, the question remains whether drastic times called for such drastic measures.

Unlike the federal carjacking statute, one of the purposes of the "Kill the Carjacker" statute is to give individuals a right to use deadly force to defend themselves.⁷⁶ This begs the question of under what conditions Louisiana citizens are allowed under the "Kill the Carjacker" statute to use deadly force that they are not permitted to use under Louisiana's self-defense statute. Under Louisiana's self-defense statute, an individual may use deadly force if: (1) he or she "reasonably believes" that there is either an "imminent danger" to his or her life or that he or she is in "imminent danger" of "great bodily harm"; and, (2) deadly force is necessary to prevent such danger.⁷⁷ An individual may also use deadly force for the "purpose of preventing a violent or forcible felony," if he or she "reasonably believes" that the commission of such felony would entail an "imminent danger to life" or "great bodily harm," and that deadly force is necessary to prevent the felony.⁷⁸ Although the Louisiana self-defense statute does not expressly mandate a duty to retreat,

74. See *supra* note 38 and accompanying text. It is interesting to note, however, that in the six months prior to the enactment of the "Kill the Carjacker" statute, the carjacking rate had actually decreased in New Orleans. *Id.*

75. See *supra* note 39 and accompanying text.

76. See *supra* note 50 and accompanying text.

77. See LA. REV. STAT. ANN. § 14:20(1) (1997). The relevant portion of the self-defense statute reads as follows: "A homicide is justifiable when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger." *Id.*

78. See LA. REV. STAT. ANN. § 14:20(2) (1997). The relevant portion of the self-defense statute reads as follows:

A homicide is justifiable when committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such an action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

Id.

courts will analyze the availability of a safe retreat in assessing the reasonableness of an individual's belief in the necessity of deadly force.⁷⁹

Under section 1 of the Louisiana self-defense statute, a motorist may use deadly force against a carjacker only if he or she "reasonably believes" that there is an "imminent danger of death" or "great bodily harm," and that deadly force is necessary to prevent that danger.⁸⁰ However, under the "Kill the Carjacker" statute, the same motorist need not fear imminent death, or even imminent bodily harm, in order to use deadly force.⁸¹ Rather, a motorist need only reasonably believe that the carjacker is "attempting to use *any unlawful force*," or subjectively believe that deadly force is needed "to prevent the entry or to compel the intruder to leave the . . . motor vehicle."⁸² Not only does the "Kill the Carjacker" statute justify homicide when a motorist does not believe that he or she is threatened with death or great bodily harm, it also explicitly specifies that there is no duty to retreat.⁸³ The absence of any inquiry into the motorist's failure to retreat will justify killing carjackers in circumstances where a death could have, and should have, been avoided.⁸⁴

79. See, e.g., *State v. Brown*, 414 So.2d 726, 729-30 (La. 1982); *State v. McClain*, 685 So.2d 590, 594 (La. Ct. App. 1996); *State v. T.N.*, 650 So.2d 288, 290 (1995); *State v. Brumfield*, 639 So.2d 312, 316 (La. Ct. App. 1994); *State v. Rader*, 609 So.2d 857, 862-63 (La. Ct. App. 1992); *State v. Dozier*, 553 So.2d 911, 913 (La. Ct. App. 1989); *State v. Stevenson*, 447 So.2d 1125, 1133 (La. Ct. App. 1984).

80. LA. REV. STAT. ANN. § 14:20(1) (1997).

81. LA. REV. STAT. ANN. § 14:20(3)-(4) (1997).

82. *Id.*

83. See *id.* The absence of a duty to retreat sets the "Kill the Carjacker" statute apart from traditional self-defense statutes because, under this new statute, courts will not examine the reasonableness of a motorist's decision to kill by considering the possibility of a safe retreat. Compare LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998) (amending LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1997)), with MODEL PENAL CODE § 3.04(2)(b) (1985).

84. For example, consider that a small, obviously unarmed teenager approaches a stronger, armed man who is driving a car and that the teenager demands the vehicle. As the teenager pulls back his arm to punch the motorist, the motorist has several choices: block the punch, accept the injury and seek legal redress; retreat; or shoot the teen. Under the "Kill the Carjacker" statute, the possibility that the motorist could have retreated unharmed cannot enter into the analysis of the court because the law gives the motorist a legal right to kill the teenager. See LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998) (amending LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1997)). However, under section 1 of the Louisiana self-defense statute, the motorist would not have had the right to kill the teenager because he could not have reasonably believed that death or great bodily harm was imminent. See LA. REV. STAT. ANN. § 14:20(1) (West 1997). Criminal defense attorney Laurie White emphasizes this point, asking: "Is this

The utility of the "Kill the Carjacker" statute is further obscured when considered in light of the other provision of the self-defense statute. In the case of a carjacking, section 2 of the Louisiana self-defense statute permits a motorist to kill a carjacker who uses force "involving danger to life or of great bodily harm" if the motorist, by using such force, is attempting to stop the carjacking and believes that "there would be serious danger" to his or her life if he or she attempted to stop the carjacking without using deadly force.⁸⁵ Section 2 also permits a third party who is not the target of the carjacking to intervene to prevent the crime.⁸⁶

The case of Aaron Bottoms⁸⁷ provides a paradigm in which to highlight the adequacy of Louisiana's self-defense statute.⁸⁸ According to Bottoms, Ernest Allen pursued him in his vehicle for over three miles to a secluded area, pulled in front of him, and then slammed on the brakes.⁸⁹ Allen then ran towards Bottoms' vehicle and pointed a gun at Bottoms' head.⁹⁰ Bottoms stated that when he heard Allen cock the gun he thought that Allen was going to kill him and his passenger.⁹¹

These facts strongly indicate that even if Bottoms had killed Allen, section 1 of Louisiana's self-defense statute would have justified his actions.⁹² Section 2 of the self-defense statute, combined

[law] going to allow a husband to kill a wife who's trying to keep him from leaving with the children?" See *Possible Ramifications*, *supra* note 5.

85. See LA. REV. STAT. ANN. § 14:20(2), (4) (West 1997), amended by LA. REV. STAT. ANN. § 14:20(4) (West 1998). For the definition of "carjacking" under the Louisiana Criminal statutes, see LA. REV. STAT. ANN. § 14:64(2)(A)-(B) (West 1997).

86. See *id.* The statute allows a motorist who drives by what he or she reasonably believes to be a carjacking in progress to kill the presumed carjacker. It is easy to imagine a situation in which a man asks directions from the driver of a car and, as he leans towards the car, reaches into his coat to pull out a pencil and some paper to write down directions. Passers-by might reasonably believe that the man is attempting a carjacking by reaching for a knife or a gun. Under the "Kill the Carjacker" statute, passers-by would have the right to kill the man.

87. See *supra* notes 58-64 and accompanying text.

88. LA. REV. STAT. ANN. § 14:20(1)-(2) (West 1997).

89. See *supra* notes 59-61 and accompanying text.

90. See *supra* note 60 and accompanying text.

91. See *supra* notes 59-61 and accompanying text.

92. LA. REV. STAT. ANN. § 14:20(1) (West 1997). According to Bottoms' statements, he subjectively believed that he was "in imminent danger of losing his life" and that the use of deadly force was "necessary to save himself from that danger." See *supra* note 59 and accompanying text; § 14:20(1). This belief is objectively reasonable when considering that Allen pursued Bottoms for three-and-a-half miles into a secluded area, stopped him, and

with the federal carjacking statute, would have also provided Bottoms with a safe harbor.⁹³ Because Allen apparently attempted a carjacking within the definition of the federal carjacking statute, section 2 of the Louisiana self-defense statute justifies Bottoms' response.⁹⁴ This justification for Bottoms' response rests on the fact that he attempted to prevent a violent felony involving danger to his life and that he reasonably believed deadly force was necessary to prevent the carjacking. Likewise, combining the Louisiana carjacking statute with section 2 of the general self-defense statute also legitimizes Bottoms response to Allen's attack.⁹⁵

pointed a cocked gun at Bottoms' head. The high rate of violence associated with carjackings in Louisiana also contributes to Bottoms' reasonable belief that he was in imminent danger of losing his life.

93. LA. REV. STAT. ANN. § 14:20(2) (West 1997); and 18 U.S.C. § 2119 (1997). This statement rests on the assumption that the vehicle was "transported, shipped, or received in interstate or foreign commerce." § 2119.

94. Allen's cohorts admitted to the police that they intended to commit a carjacking. *See supra* note 61. Allen's actions appear to constitute an attempted carjacking under the federal carjacking statute because he used "intimidation," pointed a cocked gun at Bottoms' head, arguably indicating an "intent to cause death or serious bodily harm." *See* § 2119. Whether Allen's actions qualify as such under § 2119 depends on the Fifth Circuit's view of the required intent element as either conditional or unconditional. The majority of the Circuits view the intent requirement as conditional, meaning that a defendant cannot be convicted of carjacking unless the government can prove that he or she intended to cause death or serious bodily harm to the victim if the victim resisted. *See, e.g.,* United States v. Anderson, 108 F.3d 478 (3d Cir. 1997); United States v. Arnold, 126 F.3d 82 (2d Cir. 1997); United States v. Romero, 122 F.3d 1334 (10th Cir. 1997). The Fifth Circuit has not addressed this issue. Under an *Anderson* analysis, a court would likely find that Allen violated the federal carjacking statute concluding that pointing a cocked gun at Bottoms' head rises to the level of the facts in *Anderson*, in which a carjacker pointed a gun at the victim's neck but did not physically harm him. *See Anderson*, 108 F.3d at 479. The carjacker's acts in *Anderson* fulfilled the intent requirement of the federal carjacking statute. *See id.* at 485. Even if the Fifth Circuit adopted the unconditional intent requirement of *United States v. Randolph*, one could argue that Allen intended to kill Bottoms or cause him serious bodily injury regardless of whether Bottoms resisted because Allen pointed his gun at Bottoms' head even before he demanded the vehicle, 93 F.3d 656 (9th Cir. 1996), giving Bottoms reason to believe that death was imminent regardless of whether he surrendered his vehicle. *See CNN supra* note 59. Even if the Fifth Circuit failed to find that Allen had the requisite intent under the federal carjacking statute, Bottoms' actions remain justifiable under section 1 of the Louisiana self-defense statute. *See* LA. REV. STAT. ANN. § 14:20(1) (West 1997). 18 U.S.C.A. § 2119. The self-defense statute applies to Allen's actions because violation of the federal carjacking statute constitutes a felony. *See* 18 U.S.C.A. § 2119.

95. Section 2 justifies Bottoms' actions absent the federal carjacking statute because Allen's attempted carjacking constitutes an attempted felony under Louisiana's 1993 carjacking statute. LA. REV. STAT. ANN. §§ 14:20(2), 14:64.2 (West 1997). The 1993 carjacking statute is void of any requirement that the carjacker intended to cause the victim death or serious bodily harm, thus enlarging the class of those individuals who can be considered carjacking victims

According to the sponsor of the “Kill the Carjacker” statute, the *Bottoms*’ scenario represents the “classic case” for which the statute was enacted.⁹⁶ Nevertheless, the “Kill the Carjacker” statute is unnecessary to justify *Bottoms*’ action.⁹⁷ *Bottoms* stated that he shot Allen to prevent him from killing *Bottoms* and his passenger—not to prevent an unlawful entry into his vehicle—and that he never considered the “Kill the Carjacker” statute when he pulled the trigger.⁹⁸

The “Kill the Carjacker” statute creates unnecessary dangers in light of the availability of Louisiana’s self-defense statute. The self-defense statute already permits individuals in vehicles to use deadly force to protect themselves against carjackers when they reasonably believe that the carjacker intends to kill them or cause them great bodily harm.⁹⁹ Although the Louisiana legislature designed the “Kill the Carjacker” statute to allow motorists to protect themselves, the statute goes too far because it allows a motorist to *kill* a carjacker even if the motorist *knows* that he or she is *not in danger of death or great bodily harm*, but believes only that the carjacker intends to use some degree of unlawful force.¹⁰⁰ The breadth of the statute creates problems also because it allows a motorist to kill a carjacker to prevent unlawful entry into the vehicle or to compel the carjacker to

under state law beyond the class of those who can be so considered under the federal carjacking statute. See 18 U.S.C. § 2119 (1997). The 1993 carjacking statute only requires the state to prove that the carjacker intended to take the vehicle (which, Allen admitted, he did) by force or intimidation (such as cocking a gun and pointing it at the victim’s head). See LA. REV. STAT. ANN. § 14:64.2 (West 1997).

96. See *Grace*, *supra* note 58 and accompanying text. The *Bottoms* case resembles *Johnson v. Grob*, in which an unmarked vehicle blocked Toni Johnson’s vehicle, and two armed assailants jumped from the vehicle and pointed guns at Johnson. See *Johnson v. Grob*, 928 F. Supp. 889 (W.D. Mo. 1996). In the *Johnson* case, however, the “assailants” turned out to be plain-clothed law enforcement officers. See 928 F. Supp. at 894. If *Johnson* had occurred in Louisiana, under the “Kill the Carjacker” statute, *Johnson* might have “jumped the gun” and killed the officers.

97. See *supra* notes 87-94 and accompanying text. Even the town sheriff believed that the “Kill the Carjacker” statute was unnecessary to protect *Bottoms*’ actions. See *supra* note 63 and accompanying text.

98. The “Kill the Carjacker” statute justifies the use of deadly force to prevent an unlawful entry into a vehicle, but *Bottoms*, by his own admissions, choose not to pursue such actions. See LA. REV. STAT. ANN. § 14:20(4) (West 1998). See *supra* notes 54, 92 and accompanying text.

99. LA. REV. STAT. ANN. § 14:20(1)-(2) (West 1997).

100. LA. REV. STAT. ANN. § 14:30(3)-(4) (West 1998).

exit the vehicle.¹⁰¹ Although some refer to the statute as "instant justice,"¹⁰² no justice exists in allowing an individual to kill to protect against any degree unlawful force or against unlawful entry or dispossession of private property. Unless a carjacker caused loss of life or great bodily harm, the justice system should punish him or her with reasonable and appropriate penalties, not with the "instant justice" of deadly force.¹⁰³

Applying the "Kill the Carjacker" statute to the facts of *Randolph* reveals injustice embedded within the statute.¹⁰⁴ Assuming that the *Randolph* carjacking occurred in Louisiana and, further, that the motorist shot and killed the carjacker, her shooting would have lacked justification under section 1 of Louisiana's self-defense statute because, by her own admission, she feared that the carjacker would kill her or cause her bodily harm only if she disobeyed him.¹⁰⁵ Therefore, Louisiana would not sanction her use of deadly force.¹⁰⁶ Under this same set of assumptions, the motorist's shooting would also have lacked justification under section 2 of Louisiana's self-defense statute because the carjacker did not commit a carjacking under the federal carjacking statute, and the motorist did not believe that her life was in danger as long as she obeyed the carjacker.¹⁰⁷

101. *See id.*

102. *Kane, supra* note 5.

103. The federal carjacking statute either permits a fine, imprisonment for "any number of years up to life," or the death penalty if death results from a carjacking or attempted carjacking. 18 U.S.C. § 2119(3). The statute imposes lesser penalties for carjackings or attempted carjackings in which death does not occur. § 2119(1)-(2).

104. 93 F.3d 656 (9th Cir. 1996). *See supra* note 32.

105. *See Randolph*, 93 F.3d at 685.

106. *See supra* note 32. To receive protection under the self-defense statute, the victim would have had to believe that she was "in imminent danger of losing [her] life or receiving great bodily harm." LA. REV. STAT. ANN. § 14:20(1) (West 1997).

107. Section 2 of the Louisiana self-defense statute sanctions deadly force to prevent "a violent or forcible felony involving danger to life." LA. REV. STAT. ANN. § 14:20(2) (1997). Carjacking constitutes a violent or forcible felony, but the statute lacks application because the defendant did not commit a carjacking under the federal carjacking statute. 18 U.S.C. § 2119 (1997). A greater possibility of justification exists in combining Louisiana's definition of "carjacking" under the 1993 carjacking statute with section 2 of the self-defense statute. However, the author believes that the hypothetical shooting would still lack justification. LA. REV. STAT. ANN. §§ 14:20(2), 14:64.2 (West 1997). By wielding a gun and reassuring the motorist that she should would be "okay" if she obeyed him, the defendant committed a "carjacking" under the 1993 carjacking statute because he intentionally took a motor vehicle "belonging to another person, in the presence of that person . . . by the use of force or

Therefore, under Louisiana's self-defense statute, the motorist would have lacked justification to kill the carjacker because he did not commit a crime punishable by death.

A much different result occurs, however, under the "Kill the Carjacker" statute. Under this law the motorist could justifiably have killed the carjacker without the annoyance of temporarily losing her vehicle. The "Kill the Carjacker" statute would also have vindicated the motorist of killing the carjacker in *Randolph* if she believed that the defendant was "attempting to use *any unlawful force*" against her.¹⁰⁸ Furthermore, the statute vests the motorist with the right to kill the carjacker because he attempted to make an unlawful entry into her vehicle and she reasonably believed that, if she resisted, the carjacker would kill her.¹⁰⁹ Though some see "instant justice" in the carjacker's death, such a view is myopic and ignores the fact that real justice would vacate the carjacker's conviction under the federal carjacking statute because he did not intend to kill or cause serious bodily harm to the motorist.¹¹⁰ When applied to the *Randolph* case, the result under the "Kill the Carjacker" statute is strong evidence that the statute is extreme and unjust.

A similar analysis applies to the facts in *Anderson*.¹¹¹ Assuming again that the *Anderson* carjacking occurred in Louisiana and that the motorist shot and killed the carjacker, the homicide would likely lack justification under section 1 of Louisiana's self-defense statute.¹¹² In *Anderson*, the motorist ran to the driver's side of a car to attempt to stop the carjacker.¹¹³ Therefore, it is reasonable to conclude that he did not think the carjacker would kill him or cause him the requisite serious bodily harm to trigger section 1 of the self-defense statute.¹¹⁴

intimidation." § 14:64.2. Nevertheless, the *Randolph* motorist's belief that the defendant did not intend to kill her or cause her bodily harm would negate section 2 of the self-defense statute. LA. REV. STAT. ANN. § 14:20(2) (West 1997).

108. LA. REV. STAT. ANN. § 14:20(3) (West 1991) (emphasis added).

109. LA. REV. STAT. ANN. § 14:20(4) (West 1998); *Randolph*, 93 F.3d at 658.

110. See *Randolph*, 93 F.3d at 667.

111. *United States v. Anderson*, 108 F.3d 478 (3d Cir. 1997). See *supra* note 26.

112. LA. REV. STAT. ANN. § 14:20(1) (West 1997). To receive the protections of the statute, the motorist would have had to believe that he was "in imminent danger of losing his life or receiving great bodily harm." *Id.*

113. *Anderson*, 108 F.3d at 480.

114. LA. REV. STAT. ANN. § 14:20(2) (West 1997).

Similarly, section 2 of Louisiana's self-defense statute would not sanction using deadly force against the carjacker because the *Anderson* motorist did not believe that his life was in danger.¹¹⁵

Anderson, too, reaches a different outcome under the "Kill the Carjacker" statute. Under the "Kill the Carjacker" statute, the motorist in *Anderson* could have killed the carjacker even though the carjacker obviously lacked any intention to kill or cause bodily harm to the motorist. This disparity in results occurs because in *Anderson* the carjacker attempted to make an *unlawful entry* into the motorist's car and the motorist could reasonably have believed that, if he refused to relinquish his vehicle, the carjacker would shoot him.¹¹⁶ Once again, the "instant justice" of the carjacker's death fails to compare with the real justice owed to the carjacker—namely, a conviction under the federal carjacking statute and a fine or imprisonment of no more than fifteen years, or both.¹¹⁷ The *Anderson* case further demonstrates the extreme and unjust results of the "Kill the Carjacker" statute.

115. LA. REV. STAT. ANN. § 14:20(1). Section 2 of the Louisiana self-defense statute sanctions deadly force to prevent "a violent or forcible felony involving danger to life." *Id.* In *Anderson*, the defendant carjacked the victim in violation of the federal carjacking statute. *Anderson*, 108 F.3d at 485; 18 U.S.C. § 2119 (1997). The defendant's actions also fit Louisiana's definition of "carjacking" because he intentionally took the victim's vehicle "by . . . intimidation." LA. REV. STAT. ANN. § 14:64.2 (West 1997). However, section 2 of the self-defense statute is inapplicable because the motorist did not believe that the defendant's actions threatened death or serious bodily injury. LA. REV. STAT. ANN. § 14:20(2) (West 1992). Significantly, the *Anderson* defendant had several opportunities to shoot the motorist but refrained. The defendant's actions indicate his lack of intent to use deadly force against the motorist.

116. This "reasonable belief" is supported by the court's finding that the defendant did not intend to harm the victim unless the motorist refused to relinquish the vehicle. *Anderson*, 108 F.3d at 485.

117. 18 U.S.C. § 2119 (1997). Similarly when Miss Louisiana, Erika Schwarz, was carjacked, the carjacker had every opportunity to kill her but, instead, left her unharmed. *Possible Ramifications*, *supra* note 5. Even though Schwarz "just knew" the carjacker intended to shoot her, she was wrong. *See id.* However, under the "Kill the Carjacker" statute, Schwarz could, justifiably, have killed the carjacker even though the carjacker never intended to physically harm her. *See Possible Ramifications*, *supra* note 5; LA. REV. STAT. ANN. § 14:20(3)-(4) (West 1998). Even though the statute would justify Schwarz's mistaken killing of a carjacker in this hypothetical situation, she supports the new law. *See World News Tonight*, *supra* note 38.

III. PROPOSAL & CONCLUSION

By enacting the "Kill the Carjacker" statute, the Louisiana legislature effectively prioritized the value of an automobile over the value of human life. This law encourages vigilante injustice, condones unnecessary killings and rash judgments, and allows victims to kill assailants even when no threat of death or bodily harm exists. The statute goes too far because it allows a motorist to use deadly force to combat *any unlawful force* based on the presence of a motor vehicle and permits the motorist to kill for the sake of protecting personal property. The statute puts anyone approaching a vehicle at risk of being shot and makes motorists under the age of twenty-one, who cannot carry concealed weapons, prime targets for carjackings.¹¹⁸

The Louisiana legislature should repeal this law because Louisiana's existing self-defense statute, in combination with the federal or Louisiana carjacking statute, provides adequate protection for motorists and prevents from becoming targets of carjackings. This combination promotes justice, as illustrated by the analysis of the relevant laws to the facts in the *Bottoms*, *Anderson* and *Randolph* cases. The law should not allow a person to use deadly force to protect property because this position conflicts with America's traditional view that the value of life outweighs the value of property.¹¹⁹

Louisiana should follow the Michigan response to carjackings in Detroit.¹²⁰ Louisiana and New Orleans should create a task force designed to combat carjackings and fund them, like Detroit, by adding a small surcharge to automobile insurance policies issued in Louisiana.¹²¹ By doing this, Louisiana could easily generate the revenue for instituting a task force. Louisiana should also encourage its citizens to buy car telephones and provide motorists with rapid assistance from the carjacking task force by creating an easy method for reaching the task force.¹²²

118. See *Readers' Views*, *supra* note 7.

119. See, e.g., 4 AM. JUR., *Assault and Battery* § 63 (1936).

120. See *supra* notes 65-66 and accompanying text.

121. See *id.*

122. This option is not feasible for some citizens because of the high cost of car telephones.

In the alternative, Louisiana could amend the existing self-defense statute to include aspects of the "Kill the Carjacker" statute without any reference to the carjacker's intent. This amendment should include aspects of a rational self-defense scheme, sanctioning the use of deadly force only when a motorist reasonably believes it is necessary to prevent death or serious bodily harm and only after a motorist can show that he or she did not have an opportunity to retreat. To accomplish the aforementioned changes, the statute might read: "A homicide is justifiable when committed against a person whom one reasonably believes will imminently inflict death or serious bodily injury on a person present in a motor vehicle while committing or attempting to commit a burglary or robbery of such motor vehicle." The courts should determine the availability of a safe retreat in deciding whether the motorist's belief was reasonable. Amending the self-defense statute as such would not change the scope of Louisiana's existing self-defense statute, but would serve the valuable purpose of informing Louisiana's citizens of their rights.

Finally, Louisiana should take steps to educate its citizens on carjacking prevention.¹²³ Louisiana could disseminate carjacking prevention information in the form of a pamphlet either to individuals registering their cars with the state or to those individuals applying for drivers' licenses. The state could raise funds for this effort by adding a small surcharge to either the registration fee or drivers' license fee, or by increasing its penalties for carjackings and providing stiff penalties for persons who operate chop shops to deter carjackings.

With these reforms in place, Louisiana should experience the same success in combating carjacking as Michigan without encouraging Louisiana citizens to take the law into their own hands,

However, Detroit's campaign to encourage citizens to purchase car telephones led to positive results. See *supra* notes 65-66 and accompanying text.

123. There are several ways in which drivers and passengers can protect themselves, including remaining in the vehicle if they fear a carjacking, honking the horn or screaming to attract attention, traveling on lighted and populated roads, locking all doors and rolling up windows, driving to a police station when being followed, and finally, not resisting an armed carjacker. See Avis Thomas-Lester and Santiago O'Donnell, *Forces Team Up to Fight Carjacking and Its 'Fear Factor': Carjacking Prevention Tips*, WASH. POST, Oct. 3, 1992 at B4

and without placing Louisiana's minor citizens in danger. Furthermore, the state could prevent the unjust results that potentially occur in situations such as those in *Anderson* and *Randolph*. This reformed law would lead to fewer unnecessary deaths and allow the justice system, rather than gun-toting drivers, to serve justice.

*Susan Michelle Gerling**

* J.D. 1999, Washington University.